

INFORMATION PAPER

MCCS-BJA-AL

11 August 2005

SUBJECT: Contact with DOD Contractors

1. **Purpose:** To provide guidance on dealing with contractors and their representatives.

2. **General Policy:** Preserve competitiveness by maintaining a level playing field.

a. Be sensitive to whether a specific meeting, action, or release of information would give a competitive advantage to a contractor. All similarly situated contractors should receive equal treatment.

PRACTICE TIP: If there is a request for such information and it is otherwise releasable, you should publish the information to the entire community of interested DOD contractors at the same time. Never discuss or respond to questions on matters that are being litigated.

b. Do not make unauthorized commitments, promises purporting to bind the Government, or representations that would compromise the Government's position.

c. Act impartially. Do not give preferential treatment to any private party. Accordingly, do not give VIP visitor treatment to contractor representatives who visit; i.e. no government vehicle rides from the airport, no officially-hosted free dining, etc.,.

d. Do not release "inside" information which is not otherwise publicly available. This includes:

(1) Information not available to the public under the Freedom of Information Act (FOIA);

(2) Information protected under the Privacy Act or Trade Secrets Act, and classified information;

(3) Selective release of advance procurement information, e.g. Army requirements; and,

(4) Acquisition information, such as unopened bids, proposed costs, the Government estimate, the source selection plan, price evaluations, competitive range determinations, ranking of bids, proprietary information (such as a contractor's proposed labor rates), reports of Source Selection Evaluation Boards (to include anything marked "Source Selection Information").

PRACTICE TIP: Avoid private discussions about the contractor's business and its relationship with the Army. Conduct meetings in your office--not at the contractor's office. Your staff members should sit in on discussions.

e. Avoid accepting gifts from a contractor. Occasionally, contractors offer small gifts in meetings with government personnel. Food and refreshments that are not a meal (e.g. coffee and doughnuts) may be accepted. You may also accept presentation items, such as a commemorative coin, or items worth less than \$20, providing you do not accept items from the same source totaling more than \$50 in value within the last year. Consult your legal advisor when something other than a nominal gift is offered.

f. Restricted Contacts with Former DOD Officials and Retired Military Officers. Do not meet with contractor representatives who are in violation of the prohibitions listed below. When in doubt, ask them to produce a copy of their post-government employment letter, if they have one.

(1) Former senior DOD civilian employees (SES level V and above) and retired general officers are prohibited from attempting to influence official actions in their former department or agency for one year after their departure (18 U.S.C. §207(c)).

(2) Former officers and employees are prohibited from representing someone in a particular matter that involved non-Federal parties, and in which they were personally and substantially involved while working for the government (18 U.S.C. §207(a)(1)).

(3) Former officers and employees are prohibited from representing someone else for two years after departing DOD on any matter which was under their general supervisory responsibility during their last year of government service (18 U.S.C. §207(a)(2)).

(4) Former officers and employees who personally and substantially participated in the award of a government contract, subcontract, contract modification, contract payment, delivery or task order, the establishment of overhead or other contract rates, or contract claim in excess of \$10 million, are prohibited for one year from going to work for the same contractor division responsible for the contract (41 U.S.C. §423).

g. For a thorough discussion of relationships between government personnel, contractors, and contractor employees, see MEDCOM Regulation 715-3.

3. Conclusion: When in doubt, do not hesitate to contact the Ethics Counselor, Administrative and Civil Law Division (221-2373/0485), Office of the Staff Judge Advocate, AMEDDC&S and Fort Sam Houston, if you have a question.

Ethics Counselor/1-2373/0485